



NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 23-010]

New Conflict of Interest and Conflict of Commitment Policy for Recipients of NASA Financial Assistance Awards.

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comment; extension of comment period.

SUMMARY:

To address undue foreign influence in NASA-supported research and ensure responsible stewardship of taxpayer dollars, NASA has developed a new conflict of interest (COI) and conflict of commitment (COC) disclosure policy and an associated term and condition applicable to entities implementing NASA financial assistance awards that will be implemented in NASA's Grant and Cooperative Agreement Manual (GCAM). Therefore, the Agency is soliciting public comment on this new policy. This notice extends the public comment due date.

DATES:

The comment period for the notice published January 30, 2023, at 88 FR 5930, is extended. Comments should be received on or before March 31, 2023.

ADDRESSES:

Please address comments to Christopher Murguia, Senior Analyst, National Aeronautics and Space Administration Headquarters, 300 E Street SW, Rm. 5L32, Washington, DC 20546; telephone 202-909-5918; or email christopher.e.murguia@nasa.gov. We encourage respondents to submit comments via email to ensure timely receipt. We cannot guarantee that mailed comments will be received before the comment closing date. Please include "COI/COC Policy" in the subject line of email messages.

FOR FURTHER INFORMATION CONTACT:

Christopher Murguia, email: christopher.e.murguia@nasa.gov; telephone 202-909-5918.

SUPPLEMENTARY INFORMATION:

In response to U.S. Government Accountability Office (GAO) recommendations in the report GAO-21-130, *Federal Research: Agencies Need to Enhance Policies to Address Foreign Influence*, NASA is taking steps to address undue foreign influence in research and ensure responsible stewardship of taxpayer dollars. NASA is implementing new policy that requires financial assistance award recipients to 1) maintain written and enforced policies that require covered individuals to disclose COI and COC to the recipient entity; 2) eliminate or, where appropriate, manage or reduce the disclosed conflict; and 3) disclose to NASA any conflict that cannot be eliminated, managed, or reduced. NASA's policy also describes how the Agency will address disclosures and the enforcement actions the Agency may take if a covered individual knowingly fails to disclose required information. The policy is accompanied by a term and condition requiring award recipients to comply with the COI and COC disclosure requirements that will be placed into all NASA financial assistance awards after the policy is implemented. Specifically, the policy will be implemented as a revision to the GCAM section 3.3, Conflicts of Interest Policy, and the term and condition will be implemented as an addition to NASA's standard grant and cooperative agreement terms and conditions template located in the GCAM, Appendix D, Award Terms and Conditions. The full text of the policy and term and condition is provided below and the GCAM can be accessed at

https://www.nasa.gov/sites/default/files/atoms/files/grant_and_cooperative_agreement_manual_-_oct._2022_0.pdf.

The GCAM, section 3.3, Conflicts of Interest Policy, will be revised in its entirety as follows:

1. For the purposes of section 3.3, the following definitions apply:
 - a. The term "conflict of interest," or "COI," means a situation in which an individual, or the individual's spouse or dependent children, has a significant financial interest or financial relationship, whether with a domestic or foreign entity, that could directly and significantly affect the design, conduct, reporting, or funding of research or other award-

related activities. Examples of potential COI include, but are not limited to, holding an executive position, director position, or equity over a certain dollar amount in a company that stands to benefit from award-related activities, receiving financial compensation in the form of consulting payments or payment for services from a company that stands to benefit from award-related activities, or intellectual property rights or royalties from such rights whose value may be affected by the outcome of award-related activities.

- b. The term “conflict of commitment,” or “COC,” means a non-financial conflict of interest in which an individual accepts or incurs conflicting obligations, whether domestic or foreign, between or among multiple employers or other entities. COC includes conflicting commitments of time and effort, including obligations to dedicate time in excess of institutional or funding agency policies or commitments. COC also includes obligations to improperly share information with, or to withhold information from, an employer or NASA, as well as other conflicting obligations that threaten research security and integrity. Examples of potential COC include, but are not limited to, current or pending employment; positions, appointments, or affiliations such as titled academic, professional, or institutional appointments, whether remuneration is received and whether full-time, part-time, or voluntary (including adjunct, visiting, or honorary positions); and participation in or applications to foreign government-sponsored talent recruitment or similar programs.
- c. The term “covered individual” means an individual who (a) contributes in a substantive, meaningful way to the scientific development or execution of a project proposed to be carried out with an award from a Federal research agency and (b) is designated as a covered individual by the Federal research agency concerned. NASA designates as covered individuals any principal investigator (PI), project director (PD), co-principal investigator (Co-PI), co-project director (Co-PD), and/or any other person listed as a team member in Section VI, Team Members, of the Cover Page for Proposal Submitted to the

National Aeronautics and Space Administration (form NRESS-300).

2. All NASA grant and cooperative agreement recipients shall maintain a written and enforced policy addressing actual, apparent, and potential COI and COC, both foreign and domestic. A prime or pass-through award recipient shall be responsible for ensuring that its subrecipients, if any, follow the requirements of this section.

- a. Each recipient entity's policy shall designate an official(s) to solicit and review COI and COC disclosures from each covered individual who is planning to participate in, or is participating in, a NASA-funded award. The designated official(s) shall review all covered individuals' disclosures; determine whether an actual, apparent, or potential COI or COC exists; and, if so, determine the actions that have been and shall be taken to eliminate or, where appropriate, manage or reduce the conflict. Examples of conditions or restrictions that a recipient or subrecipient might impose to manage, reduce, or eliminate a conflict include, but are not limited to:
 - i. Public disclosure of the COI or COC;
 - ii. Monitoring of research by independent evaluators;
 - iii. Modification of the research plan;
 - iv. Change of personnel or personnel responsibilities, or disqualification of personnel from participation in all or a portion of the NASA-funded activity;
 - v. Divestiture of significant financial interests that create the COI or COC (e.g., sale of an equity interest); or
 - vi. Severance of relationships that create the COI or COC.
- b. The entity's policy shall ensure that covered individuals have provided all required disclosures to the entity at the time a proposal is submitted to NASA. It shall also require that covered individuals update those disclosures on an annual basis or as soon as any new actual, apparent, or potential COI or COC arises. The policy shall include adequate enforcement mechanisms and provide for sanctions where appropriate.

3. Consistent with title 2 of the Code of Federal Regulation (CFR) 200.112, Conflict of interest, an entity applying for or currently receiving NASA grant or cooperative agreement funding shall disclose to NASA in writing any actual, apparent, or potential COI or COC if such conflict cannot be eliminated or appropriately managed or reduced in accordance with the entity's policy. In addition, such entity shall disclose to NASA in writing any actual, apparent, or potential COI or COC involving any foreign governments, their instrumentalities, or any other entities owned, funded, or otherwise controlled by a foreign government, as well as any measures the entity has taken to eliminate or, where appropriate, manage or reduce the COI or COC.

- a. An entity currently implementing a NASA grant or cooperative agreement shall disclose via email the actual, apparent, or potential conflict to the cognizant NASA Grant Officer and Technical Officer listed on their award. If an award recipient needs to correct inaccurate or incomplete COI or COC disclosures, they shall inform the cognizant NASA Grant Officer and Technical Officer listed on their award via email as soon as possible.
- b. An entity applying for a NASA grant or cooperative agreement shall clearly and explicitly disclose the conflict in its proposal. If an applicant needs to correct inaccurate or incomplete COI or COC disclosures in a submitted proposal, they shall inform the NASA technical point of contact listed in the relevant Notice of Funding Opportunity via email as soon as possible.

4. When an entity discloses to NASA a COI or COC that cannot be eliminated, managed, or reduced, the cognizant Grant Officer (if the conflict pertains to an active award) or program official (if the conflict pertains to a proposal that is under consideration), or one of their delegates, will report the conflict to OGC as follows:

- a. For disclosures pertaining to active awards, the Grant Officer will report the conflict to the NASA Shared Services Center's (NSSC) Office of the General Counsel (OGC) and copy the award's Technical Officer. The NSSC OGC will then inform HQ OGC of the reported conflict. In consultation with OGC, the Grant Officer must assess whether the

circumstances disqualify an entity or individual from holding the award and adhere to the policy in paragraph (i) below if enforcement or other actions are necessary.

- i. If a Grant Officer must take enforcement or other actions after conducting the review described above, then they will do so in accordance with the remedies for noncompliance and termination provisions in 2 CFR 200.339 through 200.343. Remedies for noncompliance include but are not limited to, temporarily withholding payment, disallowing all or part of the cost of an award activity, wholly or partly suspending or terminating the award, initiating referrals for consideration of suspension or debarment proceedings, and withholding further Federal awards.
 - ii. A Grant Officer intending to take enforcement or other action per paragraph (i) above will notify each entity subject to such action about the specific reason for the action and will adhere to the requirements in GCAM section 7.13, *Appealing a Suspended or Terminated Award*, as necessary.
- b. For disclosures pertaining to proposals under consideration, the program official must report the conflict to the appropriate OGC. In consultation with OGC, the program official will assess whether the circumstances disqualify an entity or individual from participating in the competition for award and reject the proposal if necessary.
 - i. A program official intending to take enforcement action per paragraph (b) above will notify each entity subject to such action about the specific reason for the action and will adhere to the requirements in GCAM section 7.13, *Appealing a Suspended or Terminated Award*, as necessary.
- c. When an entity discloses to NASA that it has a foreign government COI or COC, as directed above, the cognizant Grant Officer (if the conflict pertains to an active award) or program official (if the conflict pertains to a proposal that is under consideration), or one of their delegates, must assess and determine whether the circumstances should

disqualify the entity from continuing to hold the award or participating in the competition for award. This determination is to be made by the relevant Grant Officer or program official in consultation with OGC and the NASA Office of International and Interagency Relations (OIIR), as appropriate. If NASA determines that an applicant or recipient will be disqualified from participating in a competition for award or continuing to hold an award due to a foreign government conflict, then NASA will offer the applicant or recipient an opportunity to address the conflict or affiliation prior to removing a proposal from consideration or taking action on an award.

- d. If fraud, misrepresentation, or related misconduct is suspected in relation to any disclosure submitted to NASA, then the Grant Officer or program official also will refer the matter to the NASA Office of Inspector General (OIG) and the OGC Acquisition Integrity Program.

5. Enforcement.

- a. If a covered individual knowingly fails to disclose required information, NASA may take one or more of the following enforcement or other actions:
 - i. Reject a proposal,
 - ii. Suspend or terminate an award,
 - iii. Temporarily or permanently discontinue any or all funding for the covered individual or entity,
 - iv. Refer recipients for consideration of suspension or debarment proceedings;
 - v. Refer the failure to disclose to the NASA OIG for further investigation or to Federal law enforcement authorities to determine whether any criminal or civil laws were violated;
 - vi. Report the entity in the Contractor Performance Assessment Reporting System (CPARS) to alert other Federal agencies to the noncompliance;
 - vii. Take one or more of the actions described in 2 CFR 200.339, Remedies for

noncompliance; or

viii. Take such other actions against the covered individual or entity as authorized under applicable law or regulations.

- b. If an enforcement or other action is necessary, NASA will adhere to the regulations in 2 CFR 200.340, Termination; 200.341, Notification of termination requirement; and 200.342, Opportunities to object, hearings, and appeals.

The GCAM, Appendix D, Award Terms and Conditions, will be revised to include the following:

D39. Disclosure Requirements

- (a) All NASA grant and cooperative agreement recipients shall comply with the conflict of interest and conflict of commitment disclosure requirements in section 3.3, Conflicts of Interest Policy, of the *NASA Grant and Cooperative Agreement Manual* (GCAM).

Nanette Smith,

Team Lead, NASA Directives and Regulations.

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